

**TESTIMONY OF TERRY L. COCHRAN OF THE LAW OFFICES OF
COCHRAN, FOLEY & ASSOCIATES, P.C. OPPOSING TO HB 4936**

To: The Michigan House of Representatives, Insurance Committee

From: Terry L. Cochran, Esquire and the Law Offices of Cochran, Foley & Associates, P.C.

Re: Testimony In Opposition of House Bill 4936

Date: October 4, 2011

I, Terry L. Cochran, Esquire, hereby swear and attest that the following is the sworn testimony of Terry L. Cochran and ask that the following statement be read into the record as if testified live during the House Insurance Committee's hearing regarding House Bill 4936 on October 4, 2011.

I have been a member of the Michigan State Bar since 1983 and have devoted my career to representing individuals involved in catastrophic injuries including automobile and large truck accidents. I am a member of the Negligence Section of the State Bar and also the Michigan Association of Justice. As a member of the Michigan Association of Justice, I am on the Executive Committee and a Co-Chair of the Education Committee. I have prepared and filed an Amicus Curiae Brief on behalf of CPAN (Coalition to Protect Auto No-Fault) in the case entitled Griffith v State Farm Mutual Automobile Insurance Company, 472 Mich 521, 697 NW2D 895 (2005). In addition, I was also trial and appellate co-counsel in the case entitled Kreiner v Fischer, 471 Mich 109, 683 NW2d 611 (2004).

In the Griffith case, the Michigan Supreme Court narrowed the scope of applicable no-fault benefits catastrophically injured automobile and large truck accident victims. In Kreiner, the Michigan Supreme Court dramatically curtailed the rights of motor vehicle and large truck accident victims to pursue claims for pain and suffering. However, the Michigan Supreme Court rebalanced the Kreiner decision in McCormick v Carrier, 487 Mich 180, 795

NW2d 517 (2010). As a consequence, I have participated in the judicial review of the No-Fault Act not only as it relates to first party benefits, but also third party claims.

The Michigan No-Fault Act is a model system to protect catastrophically injured individuals. I currently represent Ms. Jessica Evans from Hesperia, Michigan and Ms. Katlyn Steele from Walled Lake, Michigan. Both Ms. Evans and Ms. Steele are young woman who have sustained catastrophic cervical spinal cord disruption resulting in quadriplegia.

Ms. Evans, age 17 at the time of her accident, was a victim of a drunk driver. Following the accident, she required surgery, extensive in-patient rehabilitation and discharge to her family who have and continue to provide her with 24 hour skilled nursing care. In fact, her sister, Holley Grosvenor, completed her education as a registered nurse to provide her sister with optimal care. The family organized a small corporation and maintains careful billing records of the time and services provided to Jessica so there is no overreaching or excessive billing. In addition, under the No-Fault Act, the no-fault carrier was able to locate a barrier-free home that was modified to meet Jessica's needs. At this time, Jessica is living her life that includes pursuing her educational goals and actively participating in her community.

Similarly, Katlyn Steele, age 21 at the time of her accident, sustained catastrophic cervical disruption of her spinal cord in a rollover accident in Beaumont, Texas. Because her family was insured with a Michigan no-fault policy, she was covered as a resident relative. Under the No-Fault Act, her family in conjunction with an outside agency has provided Jessica with round the clock medical care. Jessica is afflicted with two conditions associated with quadriplegia: Autonomic Dysreflexia Syndrome and Superior Mesenteric Artery Syndrome that require careful observation on a 24/7 basis to avoid potential life threatening medical events.

Autonomic Dysreflexia Syndrome is described as:

“Autonomic dysreflexia, also known as hyperreflexia, means an over-activity of the Autonomic Nervous System causing an abrupt onset of excessively high blood pressure. Persons at risk for this problem generally have injury levels above T-5. Autonomic dysreflexia can develop suddenly and is potentially life threatening and is considered a medical emergency. If not treated promptly and correctly, it may lead to seizures, stroke, and even death.

AD occurs when an irritating stimulus is introduced to the body below the level of spinal cord injury, such as an overfull bladder. The stimulus sends nerve impulses to the spinal cord, where they travel upward until they are blocked by the lesion at the level of injury. Since the impulses cannot reach the brain, a reflex is activated that increases activity of the sympathetic portion of autonomic nervous system. This results in spasms and a narrowing of the blood vessels, which causes a rise in the blood pressure.”

Similarly, Superior Mesenteric Artery Syndrome has been described as:

“**Superior mesenteric artery (SMA) syndrome** is a very rare, life-threatening gastro-vascular disorder characterized by a compression of the third portion of the duodenum by the abdominal aorta (AA) and the overlying superior mesenteric artery. The syndrome is typically caused by an angle of 6°-25° between the AA and the SMA, in comparison to the normal range of 38°-56°, due to a lack of retroperitoneal and visceral fat. In addition, the aortomesenteric distance is 2-8 millimeters, as opposed to the typical 10-20.

Similar to Jessica Evans, Katlyn Steele’s family has also established a small corporation where the family is paid through a payroll system with appropriate documentation and accounting of the services each family member provides to Katlyn Steele.

The proposed legislation suggests an hourly rate of \$14.00 per hour for unskilled and \$17.00 per hour for skilled nursing care provided by non-licensed family members. An hourly rate of \$14.00 to \$17.00 per hour is arbitrary and would grossly under compensate family members who have forfeited their work lives to care for a family member. The hourly rate suggested does not take into consideration the loss of retirement benefits,

employer based contributions for social security retirement, vacation or sick pay or the possibility of advancement in one's chosen career. The families perform the service out of a sense of love and devotion not for pecuniary gain. Each family member who sacrifices their career choice chooses to do so knowing that the pay is poor, hours long and potential for career advancement nonexistent.


Furthermore, the proposed legislation incorporates a choice system for medical coverage with a minimum of \$250,000. In the context of a catastrophic injury claim, a \$250,000 minimum would be completely inadequate for necessary hospitalization and medical care, attendant care, home modification, medical transportation, etc. A 2011 study by the Anderson Economic Group of East Lansing estimates the proposed legislative changes could result in thousands of lost jobs and millions in lost earnings, and leave about 700 people a year with severe injuries without proper treatment.

The study shows the proposed no-fault changes would cost Michigan more than \$209 million in economic output, result in a loss of between \$71 million and \$166 million in earnings, and result in a loss of between 2,556 and 5,191 jobs.

The Anderson study confirms what common sense tells us that 75 percent to 90 percent of drivers would choose to purchase personal injury protection coverage that would not cover lifetime catastrophic expenses. Medicare and Medicaid do not cover that much of catastrophic health care costs, so the net impact is a major reduction in spending on health care, home care, rehabilitation and similar purchases, which leads to the job losses and loss of earnings the Anderson study details.

Without the support of their families, Jessica Evans and Katlyn Steele would be receiving inferior services under Medicare and Medicaid. The cost of their care would be transferred onto an overburden social welfare system. However, under the Michigan No-

The Michigan No-Fault System is unique and a model system providing adequate and assured benefits. Serving the people in the State of Michigan for over thirty years, the balance struck between the defined benefits and the rights of seriously injured victims to seek compensation for noneconomic pain and suffering along with excess economic damages is fair. Although the Michigan Supreme Court has struggled with the interpretation of the serious impairment of body function threshold, the struggle reflects the ongoing advancement in medicine and societal norms that have and will continue to require judicial review. As a consequence, I stand in opposition of House Bill 4936 that will disrupt the careful balance struck in a model system to protect automobile and large truck accident victims.


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Subscribed and sworn to me before
this 4th day October, 2011.

Stephanie L MacLean

STEPHANIE L. MACLEAN
Notary Public, State of Michigan, County of Wayne
My Commission Expires 05/13/2012
Notary Public for the County of Wayne